

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6108

BILL NUMBER: SB 112

DATE PREPARED: Oct 30, 1998

BILL AMENDED:

SUBJECT: Sentencing for drug offenses.

FISCAL ANALYST: Mark Bucherl

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill enhances various penalties for possessing controlled substances, counterfeit substances, cocaine, narcotic drugs, marijuana, hash oil, or hashish so that a person who possesses the drugs may be subjected to a penalty that is as serious as if the person had been dealing the drugs. It enhances the penalty for visiting a common nuisance from a Class B misdemeanor to a Class D felony, which is the same penalty for maintaining the common nuisance. It also repeals a provision that allows for a conditional dismissal of a case in which a person pleads guilty to possessing marijuana or hashish provided that the person has no previous convictions for offenses relating to controlled substances. (A similar provision allowing for the conditional dismissal of the case if the person is dealing in marijuana or hashish does not exist.) The bill also makes conforming changes.

Effective Date: July 1, 1999.

Explanation of State Expenditures: This bill raises several misdemeanor possession penalties to felonies. It also creates and enhances several substance felony crimes. State expenditures could increase if offenders are incarcerated in state prisons rather than local jails or are incarcerated for longer periods. The following felonies and average terms as described in this bill.

<u>Felony</u>	<u>Prison Term</u>	<u>Avg Time Served</u>
Class A	20 to 50 years	7 yrs., 4 mos.
Class B	6 to 20 years	3 yrs., 4 mos.
Class C	2 to 8 years	1 yr., 7 mos.
Class D	6 mos. to 3 years	8.5 mos.

Periods of incarceration depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,500 in FY 97. Individual facility expenditures range from \$11,000 to \$27,000. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost per offender for medical care, food, and clothing is approximately

\$1,825 annually or \$5 daily. The average length of stay in DOC facilities for all Class C felony offenders is approximately one year, seven months.

Explanation of State Revenues: Changing misdemeanor penalties to felonies may cause more revenue to the Common School Fund to be collected if larger criminal fines are assessed. The maximum fines for a Class A, B & C misdemeanors are \$5,000, \$1,000 and \$500, respectively. The maximum for all felonies is \$10,000.

Court fees for both misdemeanors and felonies are \$120. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

In addition, persons convicted of a drug related offense may also be liable for a drug abuse, prosecution, interdiction and correction fee ranging between \$200 and \$1,000. The revenue collected from this fee is deposited in the State User Fee Fund and distributed to state and local programs.

Explanation of Local Expenditures: If an misdemeanor offenders are sentenced to state prison rather than to a county jail, the costs to counties may be reduced. However, the new felony provisions in this bill may cause more offenders to be incarcerated in jails, pending trial. Also, this bill removes conditional dismissal of for cases where persons with no prior records, plead guilty to possessing marijuana or hashish (a Class A misdemeanor punishable by up to one year in jail). The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Explanation of Local Revenues: Court fee for a misdemeanors or felony is \$120. If additional court actions occur and a guilty verdicts are entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

In addition, if a person is convicted of a drug related offense, a sentencing court may assess a marijuana eradication fee of not more than \$300, if the county has established a Weed Control Board. The court may also assess an alcohol and drug services program fee of not more than \$300 if a local government has established an alcohol and drug services program. Revenue collected from the marijuana eradication fee is deposited into the county user fee fund. Revenue collected from the alcohol and drug services program fee

is deposited in the county or city or town user fee fund.

This bill eliminates the provision allowing the seizure of money, other negotiable instruments, communication devices and property near or on persons who commit Class C felony cocaine or narcotic drug possession. Items seized by police may be sold, and the proceeds deposited to the State General Fund, the unit that employed the local law enforcement officers and/or the Common School Fund, depending on the value of the sale proceeds.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs Association, Department of Correction.